IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.6.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P. JYOTHIMANI

W.P.Nos.19990, 20351 to 20354 of 2007
and
M.P.Nos.1 to 3, 1+1+1+1 of 2007

1. D.Aravinth
2. C.Susanth
3. R.Pradeep
4. P.Kishorekumar
5. G.S.Sudhish
6. T.Subash
7. P.Ramprasath
8. Varadharaj
9. Prasanth
10. N.Nirmal
11. K.Karthick
12. Monica Millen
13. S.Libin
14. M.Kalai Selvi
15. J.Naveen Kumar
16. A.Ashesh
17. S.Bharathi Mohan
18. S.Dhanalakshmi
19. Ms.Shanmugapriya
20. Sathish Kumar
21. Hariharan
22. Arun Prakash
23. R.Sarath Kumar
24. S.Ganesh
25. K.Devika
26. L.Praveen Kumar
27. Bharani Dharan
28. S.Amanesh
29. Shalma Firdhouse
29b. Shakeel Ahmed
30. J.B.Karthikeyan
31. Sunil Kumar
32. Manoj Kumar

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33. Hari Krishnan
34. R.Ilavarasi
35. D.Jagadesh Kumar
36. Hemachandran
37. C.Priyanka
38. R.T.Divya
39. KevinJoseph Sebastin
40. Yogesh
41. V.B.Subash Chander
42. A.Vinodhini
43. S.Sri Ram
44. M.Maheswaran
45. Jobi
46. V.Vijayakumar
47. M.Hariprasadh
48. S.Naresh Kumar
49. P.Lekha
50. J.Franklin
51. Debieshajk
52. K.Arunkumar
53. M.Guru Raja
54. G.Goutham
55. Banu Priya
56. M.Jayakumar
57. R.Balasaravanan
58. P.Saravanan
59. Winston Benjamin
60. P.Vinothkumar
61. R.THeepankarthik
62. S.Jagadeesh
63. Murugan
64. R.Jeevanandham
65. D.Nirmala
66. T.S.Suganya
67. B.Veikarathy ...Petitioners in WP.19990/2007

Priyanga. S. ... Petitioner in WP.20351 /2007

K.S.Prasana Kumar ... Petitioner in WP.20352/2007

Hemanth Kumar,K. ... Petitioner in WP.20353/2007

M.Saravana Pandian ... Petitioner in WP.20354/2007

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-vs-

1. The State of Tamil Nadu, rep.by
   its Secretary to Government,
   School Education,
   St.George Fort, Chennai- 9.

2. The Director of Matric Education,
   College Road, Chennai-6.

3. The Chairman,
   Velammal Matric Higher Secondary
   School, Mogappair East,
   Chennai-600 037. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing respondents 1 and 2 to direct the third respondent to admit the petitioners for the XI standard education for the Academic Year 2007-2008 in the third respondent school before accommodating the outside students from the other schools by following the ratio decidendi laid down in the judgment of the Supreme Court reported in JT 1995 (6) SC 101 and pass such other further orders.

For petitioners :: Mr.Hema Sampath, SC for
Mr.E.Martin Jeyakumar

For respondents :: Mr.M.Sekar, Spl.G.P. (E) for R2
Mr.J.Raja Kalifulla, GP for R1
Mr.R.Muthukumaraswamy, SC
for Mr.V.P.Sengottuvel for R3

O R D E R

(ORDER OF THE COURT WAS MADE BY THE HONOURABLE THE CHIEF JUSTICE)

The petitioners are the students of the third respondent school. The third respondent school is a recognised private school and is under the control and supervision of the first and second respondents. The petitioners herein are the students who have successfully completed their X Standard Matriculation Education in the third respondent school in the last Academic Year. It is the case of the petitioners that the petitioners having successfully completed their X Standard Examination, submitted their applications to join in the XI Standard with the legitimate expectation and hope that they will be permitted to continue their

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higher secondary education in the third respondent school itself. The petitioners were patiently awaiting on the hope that the school will not weed out their own students for any reason. But to their shock and surprise, the third respondent school started admitting the students who have studied in other schools by receiving huge donations. It is the further case of the petitioners that when they got the knowledge of admission made by the third respondent, they rushed to the office of the third respondent and requested to admit the students who completed their X Standard in the same school. But the school authorities simply threatened the petitioners to get out of the school and wait in the entrance stating that after admitting the fresh students only the old students will be accommodated in the remaining seats. Having patiently waited at the entrance for two days, on 07.6.2007, the petitioners requested the school authorities to admit their own students. But the school authorities simply informed that they will not be admitted in the third respondent school and directed them to approach some other school for admission. The petitioners contend that the act of the third respondent in not admitting their own students in XI Standard is violative of the petitioners' right to education guaranteed under Article 41 and Article 21 of the Constitution, which is inclusive of education. Reliance is placed on the judgment of the Supreme Court in The Principal, Cambridge School -vs- Ms.Payal Gupta & Others (JT 1995 (6) S.C. 101), where the Supreme Court has laid down that the students from other schools could be considered for admission only after accommodating the students of its own school.

2. On behalf of the third respondent school, the Principal of the school has filed a counter affidavit. It is stated that every year, the third respondent issues advertisement calling for admission from LKG to X Standard based on the vacancies and for XI Standard from all other schools including the third respondent school and the admissions are made based on the marks obtained by the students on conducting an interview and all the admissions are made only on merits. It is stated that during the Academic Year 2006-2007, the third respondent school had 975 students in the X Standard and all have passed out successfully. It is stated that for the Academic Year 2007-2008, the third respondent issued advertisements in leading newspapers calling for applications for all the classes including XI standard and in all 2713 applications were received. Out of the 975 students who appeared for Matriculation Examination during the year 2007 from the third respondent school, only 800 students opted to join the third respondent school and submitted their applications. The third respondent school sent intimation of the interview to all the students and the interview was conducted by a panel of teachers from the school for all the students who applied for XI Standard. As on 9.6.2007, 632 students out of 800 students, who applied for XI Standard from the third respondent school got selected and

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admitted. It is stated that this year all the admissions relating to 1200 seats available with the third respondent school have been made by issuing regular admission to nearly 1151 students on merit according to their ranking and the remaining 49 seats are to be filled up. However, there are 49 candidates in the wait list, who are waiting to get admission. It is submitted that 18 petitioners also got selected by the third respondent school on 09.6.2007. The case of the petitioners that the third respondent threatened the petitioners to go out of the school was denied as false, incorrect and misleading. It is stated that the admissions are made as per the policy of the school and there is no infirmity or illegality in the process of admission.

3. We have heard Mrs.Hema Sampath, learned Senior Counsel appearing for the petitioners; Mr.Raja Kalifulla, learned Government Pleader appearing for the first respondent; Mr.M.Sekar, learned Special Government Pleader (Education) appearing for the second respondent and Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the third respondent school.

4. Learned Senior Counsel appearing for the petitioners submitted that the petitioners have passed Standard X Examination, whereby they have become eligible to be admitted to Standard XI as a matter of course and without any further admission test. Learned Senior Counsel further submitted that the third respondent school is one and integral body and having four streams, namely, Primary, Middle, High and Higher Secondary. So for all practical purposes, these different streams are nothing but part and parcel of the same organisation, namely, the third respondent school. It is further submitted that there was no stipulation or condition that the students have to pass admission test for entering Higher Secondary level. Such a notice was never published nor given to any of the guardians of the students. Therefore, it was the legitimate and/or reasonable expectation that the students who have passed X Standard would be admitted in the XI Standard without having any further test. Learned Senior Counsel urged that the same school having different streams cannot be allowed to hold further examination/test for admission to XI Standard. In support of her submission, she placed heavy reliance on the decision of the Supreme Court in The Principal, Cambridge School -vs- Ms.Payal Gupta & Others (supra). Reliance is also placed on the decision of this court in Sundaravel, P.A.M. -vs- The Chief Educational Officer, etc. (1998 Writ L.R. 565) and the decision of the Gujarat High Court in R.K.Rathod -vs- Principal, Shree K.N.S.M.V. High School (AIR 2000 Gujarat 60) and also the decision of Calcutta High Court in Debasish Kar Gupta -vs- State of W.B. (AIR 1999 Calcutta 300).

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5. Mr.Muthukumaraswamy, learned Senior Counsel appearing for the third respondent submitted that the school has every right to take a policy decision regarding admission of the students in Higher Secondary stream. It is contended by the learned Senior Counsel that higher secondary is separate and distinct from other wings as they are being administered by two different statutory bodies and had no connection with each other. It is pointed out by the learned Senior Counsel that upto X Standard, the school is governed by the Code of Regulations for Matriculation Schools, whereas the XI Standard and XII Standard are governed by the Rules for the Recognition of Higher Secondary Schools. Learned Senior Counsel submitted that the Section VII of the Rules for the Recognition of Higher Secondary Schools contemplates selection for entry to XI Standard and the school has carried out the selection process based on the marks obtained by the students. According to the learned Senior Counsel no law has been framed by the Government requiring automatic admission of the student from X Standard to XI Standard. In the absence of such specific law on this point, the school has been following its own admission policy, which is strictly based on merits.

6. Learned Special Government Pleader representing the State Government supported the case of the petitioners. He submitted that the same school having different streams cannot be allowed to hold further examination for admission to XI Standard. He submitted that the third respondent cannot admit students from other schools unless the existing students who have passed the X Standard examinations are admitted. He submitted that the State Government has issued G.O.Ms.No.216, dated 11.6.2007 directing all the Higher Secondary Schools that admission of the student from class X to Class XI within the same school should not be treated as a fresh admission but only as a continuation of the original admission done in that school. All such students should be admitted in Class XI as far as possible subject to the availability of seats and students from other schools should be considered only after accommodating the students from their own schools.

7. The third respondent school is a recognised unaided school. The school has got four streams, viz., Primary (I to V); Middle (VI to VIII); High School (IX and X) and Higher Secondary (XI and XII). Standard I to Standard X are governed by the Code of Regulations for Matriculation Schools, whereas the XI Standard and XII Standard are governed by the Rules for the Recognition of Higher Secondary Schools. The principal submission on behalf of the school authorities is that since two different Codes are applicable to different streams, they should be treated as two different organisations and entities. Therefore, the school is entitled to adopt any policy for admission to XI Standard Higher Secondary stream and the policy which has been adopted by the third

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respondent school is just and fair and there has been no complaint in the past. In this connection, Mr.Muthukumaraswamy drew our attention to the observation of the Supreme Court in T.M.A.Pai Foundation -vs- State of Karnataka (2002) 8 SCC 481) that unaided educational institutions must have the right to choose and select the students who can be admitted to their courses of studies. The submission of the learned Senior Counsel is that though an educational institution cannot grant admission on its whims and fancies and has to follow some identifiable or reasonable methodology of admitting the students, any scheme, which provides for merit based admission cannot be termed as illegal or arbitrary. We are afraid that the observation made in T.M.A.Pai Foundation's case, cited supra, sought to be relied upon by the learned counsel is not relevant in the fact situation of the case. The issue involved in the present case is whether the existing students of the school who have studied in the school right from Standard I to Standard X can be denied admission for the XI Standard solely on the basis that there are two different and distinct streams governed by two different regulations. There is no dispute that there is only one school viz., respondent - 3 and that school is one entity managed by the same management and it has got different sections. The provision of two different sets of regulations relating to education do not provide for separate and different legal entities. The third respondent school is a single entity under whom all the four streams are functioning. We hasten to add that the Rules for the Recognition of Higher Secondary Schools, which lay down the eligibility criteria for admission to the XI Standard, nowhere contemplate that the outside students can be selected ignoring the claims of the existing students from the X Standard.

8. The scope of passing X Standard and readmission to XI Standard came for consideration before the Supreme Court in The Principal, Cambridge School -vs- Ms.Payal Gupta & Others (cited supra). The question that came for consideration was, whether a student who passed X Standard can be denied admission to XI Standard, when the student is not putting an end to his studies in that school. In that case, the school authorities, with a view to achieve a high percentage of competency and to upgrade the academic standard, issued various circulars, and one such circular was that admission to XI Standard shall not be automatic and the student of Class X must obtain 50% marks in aggregate in the Board Examination for getting readmission in Class XI. In other words, it would be a fresh admission even to those students who passed X Standard obtaining the minimum marks of 50% in the aggregate. Inspite of the fact that the Deputy Education Officer directed that all students of Class X should be admitted into Class XI without any pass percentage, the school authorities refused to yield. Challenging the direction to receive the School Leaving

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Certificate, parents filed writ petition before the Delhi High Court. Argument on behalf of the school authorities was based on School Education Rules which provided that the Head of any unaided recognised school shall regulate admissions to the school or to any class thereof on the basis of admission test or on the basis of result of a particular class or school and the said rule thus not only takes within its fold the cases of re-admission but the cases of promotion are also covered. In that case also, the Cambridge School was an unaided recognised school. The court held that Class X examination, though public examination, does not make any difference and the question of readmission would arise only if the student goes to some other institution. The court further observed that the question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school. The decision of the Delhi High Court quashing the circulars was upheld.

9. In Sundaravel P.A.M. -vs- The Chief Educational Officer etc. (cited supra), the learned single Judge of this court (S.S.Subramani, J.) upon construing the provisions of the Tamil Nadu Recognised Private Schools Regulation Act held that students passing X standard and seeking admission for XI Standard cannot be denied admission for the XI Standard and outside students cannot be admitted unless the students from the same school are given admission in the XI Standard. The learned Judge also expressly rejected the argument of the Management that it is only a private school and no aid was received from the Government and hence no writ could be issued. In Debasish Kar Gupta -vs- State of W.B. (cited supra), the school had three streams and the management had denied admission for students to VII Standard, who have otherwise successfully passed VI Standard examination. The case of the school was that the school from VII Standard was a different stream and it was governed by different laws and, therefore, the school had rightly regarded this as a fresh admission for the VII Standard. The learned single Judge of the Calcutta High Court rejected the stand of the Management following the decision of the Supreme Court in The Principal, Cambridge School -vs- Ms.Payal Gupta & Others (supra) and held that the students are entitled to admission to VII Standard as a matter of course since once at the beginning upon test and interview they were admitted. Similar is the view taken by the Gujarat High Court in R.K.Rathod -vs- Principal, Shree K.N.S.M.V.High School (cited supra).

10. In our opinion, in the light of the law laid down by the Supreme Court in The Principal, Cambridge School -vs- Ms.Payal Gupta & Others the right of the present petitioners to seek admission in the very same school from which they have passed the public examination of X Standard cannot be defeated solely on the ground that the students coming from other schools have obtained

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higher marks in the last public examination. No centralised admission policy in this regard has been followed so as to be applicable to such schools all over the State. In the absence of such a centralised policy for admission based on all over merit of all the students passing the X Standard public examination from various schools all over the state, it cannot be left open to the schools to deny admission to students of their own school by choosing the students from other schools for admission in the XI Standard. As the students have passed their qualifying examination, they are entitled to be admitted in XI Standard subject to the availability of seats and the students from other schools can be considered only after accommodating students of their own school. In this behalf it would be useful to refer to G.O.Ms.No.126, School Education (V) Department, dated 11.6.2007 wherein the Government reiterated the following court directions issued on 09.6.2007:

(a) Admission of a student from Class X to Class XI within the same school should not be treated as a fresh admission but only as continuation of the original admission done in that school. So issuing transfer certificate to Class X students within the same school and readmitting them to Class XI is against the rules.

(b) All the students of the same school who have qualified in Class X Board Examination should be offered admission in Class XI as far as possible subject to the availability of seats. The schools may consider students from other schools for admission after accommodating the students of their own school.

(c) No admission test should be conducted by schools for their own students. After admitting their own students if there are still vacancies, they may be filled either on the basis of the Class X Board Examinations or by conducting an admission test for the students who are from other schools.

(d) No school should prescribe any cut-off marks for admission to class XI or for allotment of subjects."

11. Mr.Muthukumaraswamy, however submitted and not without sufficient force that the admission process in the third respondent school is almost over; all seats are filled up and the management has not accepted fees from 49 students due to the interim order passed by this court. He submitted that only three petitioners namely., 1) Banupriya 2) M.Hari Prasad 3) Joby Joji are entitled to have the subject of their choice as per the merit list and they will be given admission to the subjects for which they applied. He submitted that the school has been following this policy of admission for the last several years and if the interim directions are strictly enforced, there will be total chaos causing serious prejudice especially to the outside students who are already admitted. He suggested that for this year the third

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respondent school will create an additional division in Commerce Stream in its branch at Mogappair to accommodate the petitioners and other similarly situated students. The Government has also no objection for creation of additional class in view of the exigencies of the situation.

12. The writ petitions are allowed accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

js/sm

To

1. The State of Tamil Nadu, rep.by
   its Secretary to Government,
   School Education,
   St.George Fort, Chennai- 9.

2. The Director of Matric Education,
   College Road, Chennai-6.

3. The Chairman,
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